

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

RICKEY JOHNSON §
v. § CIVIL ACTION NO. 9:12cv112
MEDICAL DEPARTMENT, EASTHAM §
UNIT

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Rickey Johnson, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights in the Texas Department of Criminal Justice, Correctional Institutions Division. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Johnson was ordered to pay an initial partial filing fee of \$1.72, in conformity with 28 U.S.C. §1915(b). When he did not comply, the Magistrate Judge issued a Report on September 18, 2012, recommending that the lawsuit be dismissed without prejudice for failure to prosecute or to obey an order of the Court. Johnson did not file objections to this Report; instead, on October 5, 2012, he filed a motion for extension of time in which to pay the fee. This motion was granted on October 16, 2012, and Johnson was given until November 19, 2012, in which to pay the fee. The order granting Johnson's motion specified that failure to comply with the order could result in the adoption of the Report and the dismissal of the lawsuit without further notice to the Plaintiff. Johnson received a copy of the order on October 22, 2012, but to date has not complied, nor has he responded in any way.

Johnson's failure to comply with the order of October 16, 2012, underscores his failure to prosecute or to obey an order of the Court. He did not file objections to the Magistrate Judge's Report and thus is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 6) is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED without prejudice for failure to prosecute or to obey an order of the Court. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So ORDERED and SIGNED on February 17, 2013.



Ron Clark
United States District Judge